Calendar No. 512

99TH CONGRESS
2d Session

SENATE

REPORT
99-237

AUTHORIZING THE CONTINUED USE OF CERTAIN LANDS WITHIN THE SEQUOIA NATIONAL PARK BY PORTIONS OF AN EXISTING HYDROELECTRIC PROJECT

FEBRUARY 6 (legislative day, JANUARY 27), 1986.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.J. Res. 382]

The Committee on Energy and Natural Resources, to which was referred the Joint Resolution (H.J. Res. 382), to authorize the continued use of certain lands within the Sequoia National Park by portions of an existing hydroelectric project, having considered the same, reports favorably thereon with amendments to the text and recommends that the joint resolution as amended do pass.

The amendments are as follows:

On page 1, line 5, delete, "two renewals" and insert in lieu thereof: "one renewal".

On page 1, line 11, delete "sixty" and insert in lieu thereof: "one hundred and twenty".

PURPOSE OF THE MEASURE

The purpose of H.J. Res. 382 is to authorize the continued use of certain lands within the Sequoia National Park by portions of an existing hydroelectric project.

BACKGROUND AND NEED

Sequoia National Park was established in 1890 to preserve the "California Big Trees." The Park includes the headwaters and tributaries of the Kaweah River. The first hydroelectric facility was constructed on Kaweah River in the 1890's by Southern California Edison Co. (SCE). The powerhouse was located outside of the Park boundary. SCE proposed to add a third powerhouse in 1907 which

71-010 O

S313-4

required some diversion dams, roads, flumes and buildings to be located within the Park. The Secretary of the Interior granted a 50 year permit for the facilities in 1912.

Upon expiration of the permit in 1962, SCE requested the Congress to authorize a 50 year renewal of the operating permit. A permit was issued for a 10 year period and timed to expire at the same time the Federal Power Commission (FPC) permit expired in 1974. The Congress authorized another 10-year extension in 1974 (P.L. 93-522) subject to further study of the impact of these facilities on the park. The National Park Service transmitted the study required to the Congress July 11, 1985. The authorization to operate these facilities contained in Public Law 93-522 expired December 14, 1985.

Hydroelectric facilities constructed within the Park in accordance with the 1912 permit include diversion structures on the Middle and Marble Forks of the Kaweah and flumes to the powerhouse. The facilities also include rubble dams which were built in the early 1900's to enlarge four small lakes. The existing permit requires that not all water be diverted from the Middle Fork and Marble Fork and sets minimum flow requirements.

Legislative History

H.J. Res. 382 was introduced on September 11, 1985, in the House of Representatives. A similar measure S.J. Res. 221 was introduced in the Senate on October 21, 1985. The Subcommittee on Public Lands, Reserved Water and Resource Conservation held a hearing on H.J. Res. 382 and S.J. Res. 221 on January 30, 1986. The Administration, in testimony, supports enactment of H.J. Res. 382, if amended.

At a business meeting on February 6, 1986, the Senate Committee on Energy and Natural Resources ordered H.J. Res. 382, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on February 6, 1986, by unanimous vote of a quorum present recommends that the Senate pass H.J. Res. 382, if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield	
Mr. Weicker [1]	
Mr. Domenici [1]	
Mr. Wallop	
Mr. Warner [1]	
Mr. Murkowski [1]	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	
Mr. Johnston	

Mr. Bumpers [1]
Mr. Ford
Mr. Metzenbaum
Mr. Melcher
Mr. Bradley [1]
Mr. Bingaman [1]
Mr. Rockefeller [1]

[1] Indicates vote by proxy.

Committee Amendments

The House-passed Resolution would permit the Secretary of the Interior to issue a permit for 10 years plus 2 renewals of 10 years each. The Resolution prohibits the Secretary from granting any permit renewal until 60 days after it has been "submitted" to the appropriate Congressional Committees. The Committee adopted amendments to H.J. Res. 382 that would permit the Secretary of the Interior to issue a permit for 10 years plus one renewal of 10 years. The amendment prohibits the Secretary from granting any permit renewal until 20 days after it has been submitted to the appropriate Congressional Committees.

During the hearing on H.J. Res. 382, the Committee was urged to amend section 3 of the House-passed resolution to require specific terms and conditions in any special use permit issued for the operation of those portions of the Kaweah project located within the Park boundary.

While the Committee did not adopt this approach, it is the Committee's intent that any terms and conditions included in the permit issued under this authority have protection of the Park resources as a paramount objective. In this regard, the Committee urges the inclusion of provisions in the permit ensuring (1) that the structural integrity of the facilities is maintained so as to avoid a catastrophic failure that could endanger public safety and cause irreparable damage to the Park; (2) that any needed repairs to the facilities are made in a timely manner and that any damage to Park resources resulting from such repair is corrected; and (3) that the lands affected by the project will be restored and rehabilitated in the event of abandonment at some time in the future.

Additionally, the Committee urges the National Park Service to prepare an economic and environmental study of the existing small hydroelectric dams and reservoirs in the Mineral King addition to the Park. The National Park Service should work closely with Southern California Edison and other interested parties in the preparation of this report and should submit it to the Committee as soon as practicable.

In this regard, the Committee notes that any permit issued by the Secretary pursuant to this resolution will included these four small dams as well as the diversion structures on the Middle and Marble Forks of the Kaweah and the flumes to the powerhouse.

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will

request it to be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.J. Res. 382. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.J. Res. 382, as reported.

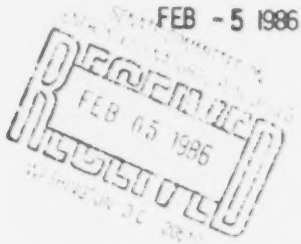
Executive Communications

The pertinent legislative reports received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to H.J. Res. 382 are set forth below:

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB - 5 1986



Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on H.J. Res. 382, as passed by the House of Representatives, "To authorize the continued use of certain lands within the Sequoia National Park by portions of an existing hydroelectric project."

We do not object to enactment by the Senate of H.J. Res. 382, if amended to meet our concerns.

Section 1 of H.J. Res. 382 would authorize the Secretary of the Interior to issue a permit for an existing Southern California Edison Company hydroelectric project in Sequoia National Park, known as Kaweah No. 3, for an initial period of 10 years with a potential for two renewals of equivalent duration. Section 2 provides that any permit renewal shall not be executed prior to 60 days from its submittal to the appropriate Committees of the Congress. Section 3 provides that the permit shall prohibit the expansion of Kaweah No. 3 and shall contain other terms and conditions deemed necessary and proper by the Secretary of the Interior for the management and care of Sequoia National Park.

In setting aside the land to be known as Sequoia National Park, the Act approved September 25, 1890, provided that the Secretary "shall provide for the preservation from injury of all timber, mineral deposits, natural curiosities or wonders within said park, and their retention in their natural condition." Also, the Secretary "shall provide against the wanton destruction of the fish and game found within said park. . .." However, in the Act approved February 15, 1901, the Secretary of the Interior was authorized to permit the use of rights of way in various parks, including Sequoia National Park, for electrical plants, poles, and lines for the generation and distribution of electrical power; for telephone and telegraph purposes; for canals, ditches, pipes and pipelines, flumes, tunnels, or other water conduits; and for water plants, dams and reservoirs. The Act further provided that permission could be revoked by the Secretary at his discretion.

In legislation revising the park boundaries in 1926, provision was made that no permit, license, lease, or authorization for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits of said park shall be granted or made without specific authority of Congress. Therefore, when the original permit in question expired on March 5, 1962, the Solicitor of the Department of the Interior advised the Secretary that no authority existed under which to issue a permit and that legislation would have to be sought. To remedy this situation, legislation was introduced and subsequently enacted to provide specific authority to issue a permit to the Southern California Edison Company (P.L. 88-47; 77 Stat. 70) for the Kaweah No. 3 hydroelectric project in Sequoia National Park. The term of the permit was to expire not later than August 6, 1974. Another House Joint Resolution was signed on December 14, 1974 (P.L. 93-522; 88 Stat. 1660), to extend the special use permit for an additional 10 years, but requiring that the National Park Service prepare and transmit to Congress a report on the impact of the operations of the Kaweah No. 3 facility on Sequoia National Park. This study was transmitted to Congress in July 1985.

Generally speaking, if we were faced today with the situation of allowing a new hydroelectric project within the boundaries of Sequoia National Park, we would oppose it because the Congress has the sole authority to allow such projects in the national parks. However, given the fact that the project has been in operation for about 75 years, there is a historical aspect we must consider. Our mission, though, is to protect the resources of the national park. Therefore, we welcomed the study of the impacts of Kaweah No. 3 on the park resources required by the 1974 law. While the results of the study did not indicate sufficient adverse impact to prompt our objection to the relicensing of the Kaweah No. 3 project, several issues of concern were raised: first, maintenance of a minimum flow level of the river; second, control over the access and types of equipment used in maintenance of the facility; and third, clarification of the responsibility of Southern California Edison Company for the removal of the facilities and site restoration in case of abandonment of Kaweah No. 3.

In light of these concerns, we recommend that H.J. Res. 382 be amended to specifically authorize the Federal Energy Regulatory Commission (FERC) to issue a 10-year term license, as well as to limit the Secretary's permit to a 10-year period. The FERC license could be renewed for additional periods of 10 years each as provided for the Secretary's permit. This 10-year limitation would allow periodic review of resource impacts and modifications of the conditions of the permit, when necessary, to assure protection of the park environment. We would also include provisions to meet our three concerns, listed above. In addition, we intend to set up a monitoring system to determine baseline changes.

The reason we are concerned with the existing language of H.J. Res. 382, as passed by the House of Representatives, is because FERC, which has no existing authority to license hydroelectric projects within the National Park System, could issue a license for a period of up to 50 years, thereby exerting undue pressure on the Secretary to reissue a permit even when such action could or would be detrimental to the resources of the park. We believe it is more appropriate for both FERC and the Secretary to reconsider the situation at the same time in 10 years in light of adequate resource data.

While the issue of Kaweah No. 3 is being considered, we would like to call attention to the fact that there are four hydroelectric dams and reservoirs in the Mineral King addition to the park. They were constructed between 1903 and 1912 for the Kaweah No. 1 project to provide additional water sources during periods of low flow.

While we have been told by representatives of the Southern California Edison Company that the economic benefits of these facilities are extremely minimal and are of relatively little value in the generation of electricity, we have not studied either the environmental effects or the economics associated with these dams. We intend to prepare an economic and environmental study to determine whether or not these dams should be relicensed, and a new permit issued. We will share the results of this study with the Committee when it is complete. As we did during the study period on the Kaweah No. 3 project, we intend to work closely with all interested parties.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DEPUTY ASSISTANT SECRETARY P. Daniel Smith

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by H.J. Res. 382, as reported.

○